IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10084 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? :

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CHILODA GRAM PANCHAYAT

Versus

SECRETARY

Appearance:

1. Special Civil Application No. 10084 of 1993

MR SV PARMAR for Petitioner No. 1

MS PREETI S PARMAR for Petitioner No. 1

MRS SASI V PARIKH for Respondent No. 1-2

GOVERNMENT PLEADER for Respondent No. 3

MR PJ VYAS for Respondent No. 4

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 23/07/2002

ORAL JUDGEMENT

1. The short question involved in this petition is

whether an Appellate Committee of a District Panchayat can pass an order counter to the order passed by the Development Commissioner on the same subject matter.

2. The short facts of the case are that on 28-12-1992, the Gram Panchayat Chiloda, petitioner herein, passed resolutions No.3, 4, and 5. So far as resolution No.5 is concerned, Appeal No.4/1993 was preferred before the Appellate Committee of the District Panchayat. The appeal was entertained by the Appellate Committee and on 25-6-1993, the Appellate Committee had passed the order, whereby the stay order granted against resoltuions No.3, 4, and 5 was vacated. It may be noted that prior to the order dated 25-6-1993, order dated 28-5-1993 was passed by the Appellate Committee of the Distrit Panchayat, whereby the stay was vacated in Appeal No.4/1993. It is the case of the petitioner panchayat that against the order dated 25-6-1993 of the Appellate Committee of the District Panchayat, Revision Application No.74/1993 was preferred before the Additional Development Commissioner and the said revision was entertained by the Additional Development Commissioner and the Additional Development Commissioner has passed the order on 22-7-1993, whereby the stay was granted against the operation of the order passed by the Appellate Committee of the District Panchayat. The case of the petitioner is that pending the said revision, notice dated 9-8-1993 came to be issued by the Appellate Committee of the District Panchayat, observing that since the matter is pending before the Additional Development Commissioner and until the final orders are not passed, the bill for recovery of additional tax cannot be served upon the applicant, Ranchhodbhai S. Patel and, therefore, it was directed that until the specific instructions are received, the operation of the same was suspended. The case of the petitioner is that thereafter notice dated 7th September, 1993 was also issued by the Deputy District Development Officer to the Sarpanch of the petitioner Panchayat, intimating that inspite of the directions dated 9-8-1993, the same is not complied with and, therefore, why the action should not be taken against him. The case of the petitioner is that thereafter once again an order dated 23rd September, 1993 came to be passed by the Appellate Committee of the District Panchayat, whereby the stay order has been granted against the bill making payment, which is the subject matter of the revision before the Development Commissioner.

3. Mr.Parmar, learned Counsel for the petitioner submits that when the subject matter was pending before

the Development Commissioner and more particularly when the Development Commissioner, who is the higher than the Appellate Committee of the District Panchayat, has passed the order on 22-7-1993, the Appellate Committee of the District Panchayat could not have insisted for the implementation of its earlier order dated 28th May, 1993 read with the order dated 25-6-1993 and, therefore, he submits that the notice dated 9-8-1993 and further notice as the consequences thereof are without any authority and deserves to be quashed. Mr.Parmar submits that so far as the notice dated 7th September, 1993 against the Sarpanch of the Gram Panchayat for taking action under Section 49 of the Act is concerned, the same has become infructuous, because the term of the said Sarpanch is over by efflux of time. However, he submits that the order dated 9-8-1993 is in operation and the same cannot be allowed to operate since it is running counter to the order passed by the Development Commissioner dated 22-7-1993.

4. Mr.P.J.Vyas, learned Counsel appearing for respondent No.4 has supported the order passed by the Appellate Committee of the District Panchayat.

5. However, Mr.H.C.Patel, learned AGP appearing on behalf of the State Government has submitted that as a matter of fact there is a collusion between the Gram Panchayat and the persons who are enchroachers over the land in question. He submitted that the land is situated at Chiloda Circle and the Gram Panchayat has no authority to regularise the enchroachments and, therefore, the resolution passed by the Gram Panchayat for recovering the amount at the rate of Rs.3/-(Rupees three only) per sq.ft. from the enchroachers is ex-facie illegal and, therefoe, he submitted that the said resolution of the Gram Panchayat deserves to be quashed. In response to the contention of Mr.H.C.Patel, regarding the regularisation of the enchroachment and recovery of the money, on behalf of the Gram Panchayt it has been submitted that the Gram Panchayat is not interested in regularising the enchroachment, but is eager to see that the enchroachers are removed.

6. Since the matter is pertaining to 1993, upon a query put by the Court, Mr.Parmar has reported that both Revision Application No.74/1993 as well as Appeal No.42/1993 are still pending before the Development Commissioner and the Appellate Committee of the District Panchayat, as the case may be. Since the said revision is pending and is, up till now, not decided, it is also requested that the revision may be directed to be disposed of within a stipulated time limit.

7. Considering the above, the contention raised by Mr.Parmar that the Appellate Committee of the District Panchayat cannot pass contrary order to the order passed by the Development Commissioner, deserves consideration, because as per the scheme and the hierarchy provided under the Panchayats Act, the order of the Appellate Committee is revisable by the Development Commissioner, because the Development Commissioner exercises deleated the powers of the State Government in the present case since it was revision. When the higher forum has granted stay, as per the sound principles of judicial discipline, the Appellate Committee of the District Panchayat which is lower authority cannot pass a contrary order or cannot pass an order which rather nullifies the order passed by the higher authority i.e. the Development Commissioner. The perusal of the notice dated 9-8-1993 passed by the Appellate Committee of the District Panchayat shows that there is reference to the proceedings of SCA 1360 of 1991 and the order of status-quo granted therein. However, Mr.Parmar, learned Counsel appearing for the petitioner, has made statement at bar that the proceedings of SCA 1360 of 1991 is pertaining to the payment of tax for a different period and the same is not the subject matter of the appeal before the District Panchayat, nor the same is the subject matter of revision before the Additional Development Commissioner. In view of the said statement, it can be seen that the Appellate Committee of the District Panchayat, for the purpose of issuing notice, has relied upon its earlier order dated 25-6-1993 and it has also recorded that the revision is pending before the Additional Development Commissioner and the stay order has been granted. The Appellate Committee itself has interpreted that until the final order is passed, the Gram Panchayat cannot issue bill for the additional amount. Such a interpretation is not only contrary to the principles of sound judicial discipline, but even otherwise also the same is without proper application of mind in as much as once the Additional Development Commissioner has granted stay, as consequence thereof, it would be that the Gram Panchayat would be at the liberty to proceed with the recovery of tax. In any case recovery of tax cannot be stayed by the Appellate Committee of the District Panchayat as per the notice dated 9-8-1993. In the result, the notice dated 9-8-1993, copy of which is produced at Annexure "C" to the petition, is arbitrary and against the sound principles of judicial discipline and it cannot, therefore, stand in the eye of law. So far as the order at Annexure "F" is concerned, the same is nothing but a consequential order passed on the basis of the order

dated 9-8-1993 and the same is also running counter to the order passed by the Development Commissioner dated 22-7-1993.

8. In view of the above, the order dated 9-8-1993 and the order dated 22-9-1993 at Annexures "C" and "F" respectively, passed by the Appellate Committee of the District Panchayat are quashed and set aside and it is further directed that the Development Commissioner, before whom the revision No.74/1993 is pending, shall consider the revision on merits and shall render the decision within a period of three months from the date of receipt of the order of this Court. It is also made clear that the Development Officer, while deciding the matter, shall also take into consideration the submissions made on behalf of the learned AGP that the Gram Panchayat has no authority to regularise the enchroachment by recovering the money. The rule is made absolute to the aforesaid extent. There shall be no order as to costs.

23-7-2002 (Jayant Patel, J.)

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